

# **JOINT COMMITTEE ON ADMINISTRATIVE RULES**

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. MAGGIE CROTTY

CO-CHAIR:  
REP. BRENT HASSERT

EXECUTIVE DIRECTOR:  
VICKI THOMAS



700 STRATTON BUILDING  
SPRINGFIELD, ILLINOIS 62706  
271/785-2254

SEN. J. BRADLEY BURZYNSKI  
SEN. JAMES CLAYBORNE, JR.  
SEN. RANDY HULTGREN  
SEN. DAN RUTHERFORD  
SEN. IRA SILVERSTEIN  
REP. JOHN FRITCHEY  
REP. LOU LANG  
REP. DAVID R. LEITCH  
REP. DAVID MILLER  
REP. ROSEMARY MULLIGAN

## **MINUTES**

**February 13, 2008**

### **MEETING CALLED TO ORDER**

The Joint Committee on Administrative Rules met on February 13, 2008 at 11:00 a.m. in Room A-1 of the Stratton Office Building in Springfield IL.

Co-Chair Crotty announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

### **ATTENDANCE ROLL CALL**

X Senator Bradley Burzynski	Representative John Fritchey
X Senator James Clayborne, Jr.	Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
X Senator Ira Silverstein	X Representative Rosemary Mulligan

### **APPROVAL OF THE MINUTES OF THE PREVIOUS JCAR MEETING**

Senator Burzynski moved, seconded by Representative Leitch, to approve the minutes of the January 9, 2008 meeting. The motion passed unanimously.

### **REVIEW OF AGENCY RULEMAKINGS**

***Department of Children and Family Services – Confidentiality of Personal Information of Persons Serviced by the Department of Children and Family Services (89 Ill. Adm. Code 431; 31 Ill. Reg. 9708)***

Representative Mulligan, seconded by Senator Rutherford, moved that JCAR and the agency agree to extend the 2<sup>nd</sup> Notice period for this rulemaking for an additional 45 days. Jeff Osowski, DCFS Rules Coordinator, and Susan Netznik, Policy Office Chief, indicated the agency's concurrence. The motion passed unanimously.

***Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 31 Ill. Reg. 15424)***

Director Barry Maram, Chief of Staff Tamara Hoffman and Joseph Holler, Bureau Chief for Rate Development, represented the Department.

Senator Crotty asked if the Department would be willing to agree to JCAR's request that the 2<sup>nd</sup> Notice period for this rulemaking be extended for an additional 45 days.

Director Maram responded that the Department could not agree to an Extension. People are signed up and receiving healthcare. The Department was looking forward to being heard today.

Ms Hoffmann also pointed out that HFS staff was available at this February meeting to respond to any JCAR questions and that the Department is ready to move to adoption.

Senator Crotty then stated that consideration of this rulemaking would be postponed until February 26.

Ms Hoffmann stated that the agency had fulfilled its obligations with regard to 2<sup>nd</sup> Notice and it believes that, after this hearing, it will have the right to move forward with adoption.

Senator Crotty said that it was evident from HFS statements at prior meetings that this was what the agency believed. She pointed out that JCAR does want to work with HFS on the FamilyCare issue, and that is why it is asking for the Extension.

Ms Hoffmann indicated her understanding and reiterated her comment that HFS staff was available at this meeting to respond to JCAR questions.

Senator Rutherford asked when the Governor's budget address is scheduled.

Ms Hoffmann responded that the address is scheduled for February 20.

Senator Rutherford asked the Chair when this rulemaking's 2<sup>nd</sup> Notice Period expires.

Senator Crotty stated that the expiration date was February 27.

Senator Rutherford pointed out that the Department could not legally adopt this rulemaking until after February 27. The Chair has stated that consideration of this rulemaking would be postponed until February 26. This will give JCAR members the benefit of hearing what the Governor says about healthcare in his budget address. If HFS thinks it can go ahead and file the rules, it could face another law suit, which this Administration may be willing to take on. However, the 2<sup>nd</sup> Notice doesn't expire until the 27<sup>th</sup>, and JCAR is postponing its consideration until the 26<sup>th</sup>.

Director Maram again stated that HFS believes it has gone through the process and that it is a very important factor that people are currently being signed up. The Department does not agree to an Extension.

Senator Rutherford stated that the Committee realizes an agreement for an Extension has not been reached. However, JCAR has this rulemaking under its purview until the deadline date of February 27. The Governor's budget address is February 20. JCAR believes it is appropriate for it to hear what the Governor has to say with regard to the budget and with regard to healthcare. JCAR can postpone consideration of this rulemaking. It is not certifying No Objection; it is not allowing it to move forward. HFS will have to wait until the 27<sup>th</sup>. JCAR is postponing its consideration until the 26<sup>th</sup>. He requested that HFS have the relevant staff available for that meeting on the 26<sup>th</sup>. By that time, JCAR will have the benefit of having heard the Governor's address and will be better prepared to present questions to HFS.

Director Maram stated that HFS has both the authority and the dollars to expand the FamilyCare program.

***Department of Healthcare and Family Services – Hospital Services (89 Ill. Adm. Code 148; 32 Ill. Reg. 518) (Emergency) and Hospital Reimbursement Changes (89 Ill. Adm. Code 152; 32 Ill. Reg. 529) (Emergency)***

Senator Crotty pointed out that JCAR is always willing to try to work with agencies to make their rulemakings acceptable, but it has to have timely information in order to do so. As members were entering today's meeting, they were presented with new information from HFS affecting a rulemaking under consideration at this meeting. This is not timely provision of information.

The Department was again represented by Director Maram, Ms Hoffmann and Mr. Holler.

Ms Hoffmann acknowledged that this incident was her fault. She thought she had forwarded an accurate response to a JCAR question, but further discussion with HFS staff proved that information to be faulty. This precipitated the late arrival of the corrected information.

Senator Burzynski suggested that the First Notice description of the rulemaking stated there would be a \$40 million savings from the outlier revisions (89 Ill. Adm. Code 152). The federal requirement for publication of a notice in a newspaper also requires an estimate of annual cost or savings. In the newspaper notice used in this instance, an annual savings of \$20 million was claimed. Perhaps this is a situation HFS needs to address before moving forward with these policies so there is no problem with the federal government.

Mr. Holler explained that the \$20 million reflected the January 1 implementation date. The \$40 million is an annual number.

Senator Burzynski pointed out that federal regulations require that the publication of estimated increases or decreases in cost reflect annualized cost. This error should be easily remediable.

Senator Burzynski, seconded by Senator Rutherford, moved that JCAR object to the 2 HFS emergency rules because the Department filed an improper public notice. Fiscal impacts

presented in the official notice and in the *Illinois Register* notice accompanying the filing of the emergency rule in these 2 instances are inconsistent. The motion passed unanimously.

***Illinois Commerce Commission – Organization and Public Information (2 Ill. Adm. Code 1700; 31 Ill. Reg. 16734)***

Senator Hultgren moved, seconded by Representative Miller, that JCAR object because the rulemaking has insufficient standards governing the Commission's use of discretion in denying or granting requests to speak, in violation of Section 5-20 of the Illinois Administrative Procedure Act.

Conrad Rubinkowski appeared for the Commission and indicated that the Commission understands the Objection and will be working to develop the needed standards.

The motion passed unanimously.

Co-Chair Crotty asked if any member desired to discuss any other rulemaking. Senator Rutherford requested consideration of an emergency rule adopted by the Department of Healthcare and Family Services.

***Department of Healthcare and Family Services – Reimbursement for Nursing Costs for Geriatric Facilities (89 Ill. Adm. Code 147; 32 Ill. Reg. 415) (Emergency)***

Senator Rutherford pointed out that he had been an original sponsor of the legislation authorizing use of the minimum data set (MDS) approach to long term care reimbursement. The purpose of MDS was to insure that there is complete disclosure, "sunshine", and input from the industry and participants. For consistency with this intent, the regular rulemaking process needs to be followed when changes are made in MDS. HFS has adopted by emergency rule a considerable number of changes in MDS that the industry will have to implement. An emergency rule does not have the benefit of industry participation in policy formulation, as does the regular rulemaking process. The Senator indicated his intention to move an Objection and Suspension, allowing public dialogue prior to adoption of these policies through the proposed rulemaking process.

Senator Rutherford, seconded by Representative Lang, moved to object to and suspend the emergency rule because no emergency required the adoption of rules in less time than is required under general rulemaking procedures in Section 5-40 of the IAPA. Adoption of this policy through an emergency rule circumvents the public comment period and is not in the public interest.

The motion passed on a rollcall vote of 10-0-0.

**CERTIFICATION OF NO OBJECTION**

Senator Silverstein moved, seconded by Senator Clayborne, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, or did not remove from

the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based on the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued.

The motion passed unanimously.

### **AGENCY RESPONSES**

***Department of Financial and Professional Regulation – Supplemental Reports for Accident and Health Insurers (50 Ill. Adm. Code 937; 31 Ill. Reg. 10546)***

Representative Leitch moved, seconded by Representative Miller, that JCAR publish a Notice of Failure to Remedy. The motion passed unanimously.

***Department of Agriculture – Halal Food Disclosure (8 Ill. Adm. Code 190; 31 Ill. Reg. 2053)***

***Secretary of State – Uniform Partnership Act (1997) (14 Ill. Adm. Code 166; 31 Ill. Reg. 12690) and Uniform Limited Partnership Act (2001) (14 Ill. Adm. Code 171; 31 Ill. Reg. 12703)***

***State Board of Elections – Miscellaneous (26 Ill. Adm. Code 207; 31 Ill. Reg. 12576)***

Based on the appropriateness of the agencies' responses, no further action was taken.

### **MARCH MEETING DATE**

Co-Chair Crotty announced that the next monthly meeting is scheduled for Tuesday, March 11, 2008, 9:00 a.m., Room C-1, Stratton Office Building, Springfield IL.

### **RECESS**

Senator Crotty announced that the February meeting is recessed until Tuesday, February 26, 2008, at 11:00 a.m. in Room C-1 of the Stratton Office Building in Springfield.

## **MINUTES OF RECONVENED MEETING**

**February 26, 2008**

On February 26, 2008 at 11:00 a.m., the Joint Committee on Administrative Rules reconvened the February meeting in Room C-1 of the Stratton Office Building in Springfield IL.

### **ATTENDANCE ROLL CALL**

X Senator Bradley Burzynski	X Representative John Fritchey
Senator James Clayborne, Jr.	X Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
Senator Ira Silverstein	X Representative Rosemary Mulligan

The meeting was called to order by Co-Chair Crotty.

### ***Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 31 Ill. Reg. 15424)***

Director Barry Maram; Chief of Staff Tamara Hoffman; Theresa Eagleson, Administrator of the Division of Medical Programs; Jacqui Ellinger, Deputy Administrator of the Division of Medical Programs; and Mike Moss, Finance Administrator, represented the Department.

Representative Mulligan: If the rule were prohibited, what would happen to the persons with incomes of up to 185% FPL who formerly received medical coverage under the expired SCHIP waiver?

Ms Hoffman: JCAR has not yet taken that action, and HFS would have to take that question under consideration.

Representative Mulligan: How many people had been covered by the waiver?

Ms Eagleson: About 20,000 people.

Representative Mulligan: What would be the difference between the 65% federal match under the waiver and the 50% federal match under Medicaid?

Ms Eagleson: About \$65 million/yr.

Representative Mulligan: What would be the cost if the State had to cover these 20,000 people with no federal participation?

Ms Hoffman: It would not necessarily work that way.

Representative Mulligan: What would happen?

Ms Hoffman: The federal government would not necessarily consider whether JCAR had prohibited the rule.

Representative Mulligan: How does HFS plan to cover these people if the rule is prohibited? Is HFS covering them now?

Ms Hoffman: They are now covered.

Representative Mulligan: Has the program been without federal match since the expiration of the waiver?

Ms Eagleson: HFS has a State Plan amendment pending with the federal government and believes it is going to be approved shortly. It would allow the State to claim the standard 50% Medicaid match on these persons back to 10/1/07.

Representative Mulligan: Once you have that State Plan amendment, you will no longer have to adopt additional rules to cover those persons under medical assistance, isn't that correct?

Ms Hoffman: I'm not sure what the Representative is asking. It is in anticipation of that amendment that HFS is before JCAR now, in part.

Representative Mulligan: If JCAR were to prohibit the rulemaking in whole without dividing out the 20,000 who were previously covered by the waiver, as JCAR asked HFS to do back in November and which HFS has not done, what happens to the 20,000?

Ms Hoffman: We would consider it and discuss it with the federal government. I can't answer that question right now.

Representative Mulligan: But you are not planning to drop them totally from State healthcare plans are you?

Ms Hoffman: We would have to take that under advisement. We would have to talk to the federal government. I'm not prepared to answer that question right now.

Representative Mulligan: You have not anticipated that might happen?

Ms Eagleson: We have no reason to believe right now that the federal government won't approve that State Plan amendment.

Representative Mulligan: You think you'll get a 50% match retroactively to 10/1/07?

Ms Hoffman: We'll have to work with the federal government on that.

Representative Mulligan: Based on my years of working with this issue, I would think that would be a viable option to discuss with them and one that you might get.

Director Maram: We would hope that you are going to approve this rule, but if the rule is not approved, we are going to have to consider other factors.

Ms Hoffman: Since the recess of this Committee, we have had extensive conversation on technical clarifications, not substantive issues, and our position has not changed. We believe the rule is ready to be adopted as it stands.

Representative Mulligan: In deliberations on the 2006 budget, I argued against giving HFS authority to do this. I'm wondering what you believe is your authority to expand FamilyCare to 400% FPL for adults.

Ms Hoffman: We do believe we have the authority and that we have the funding. That authority is the Public Aid Code. We have expanded this program through that authority in the past, and it was approved by this Committee.

Representative Mulligan: Do you have any examples?

Ms Hoffman: Illinois Healthy Women.

Representative Mulligan: The General Assembly also gave the HFS Director expanded powers of negotiation on the hospital tax and other issues that pertain to negotiating with the federal government that allow him to go ahead without coming back to the General Assembly. I was against this action, but now I wonder if that provision doesn't also give you authority in this situation.

Ms Hoffman: We also believe we have that authority Representative.

Representative Mulligan: How many individuals have you signed up under the FamilyCare expansion?

Director Maram: Approximately 3300. Plus the 20,000 who were formerly covered under the waiver.

Representative Mulligan : Of the 3300, how many are paying premiums?

Director Maram: All of them. These people are those with over \$38,000/yr. family income but who do not have health insurance through their employer. If anyone in this room were to lose their health insurance, they would be faced with pre-existing conditions in getting new insurance. These are people who are working every day, playing by the rules, but they do not have access to a group policy. One of the reasons the cost of this program is reasonable is because there is cost-sharing, but the bottom line is that the number one cause of bankruptcy, other than mortgages, is families not having healthcare coverage. They're buying into this. It's not free, but it's giving them a chance to work.



Ms Hoffman: It has been our experience since starting this program that, because of the premium and other factors, the cost of this program is lower than expected.

Representative Mulligan: Do you have a template of what you're charging in premiums, according to income?

Ms Hoffman: It's in the rule.

Representative Mulligan: Is this scale similar to Covering ALL KIDS?

Ms Hoffman: Absolutely. Most of the program, and the language of the rule, is very much parallel.

Representative Mulligan: So you are self-insuring by charging a premium and adding people who cannot normally get insurance?

Director Maram repeated his statements about this being a program for working people.

Ms Hoffman: It allows them to buy into a group policy.

Representative Mulligan: Do you know how many of these people have pre-existing conditions, or are they just people who want insurance and can't get it?

Director Maram: This program has looked at what is financially consistent, and that is how the premiums were decided.

Ms Hoffman: We also have a thorough analysis of all of the factors that would bring people into the program, and I can get you that information.

Representative Mulligan: Have you done any surveys that have asked people if they've tried to get other insurance and what the rate would be?

Director Maram: People who come into this program haven't been able to get insurance. These are working adults. Their children are covered, often through ALL KIDS, and this is allowing the family to buy into it cost-effectively.

Representative Mulligan: One of the arguments we've heard from public commentators is that you will tap into the private insurance market.

Director Maram: On the contrary, it is exactly the opposite. These are people who don't have insurance. Approximately 25% of persons working today don't have insurance through their employers.

Representative Mulligan: Are you planning on limiting the number of persons who could sign up each year according to the amount budgeted?

Ms Hoffman: We believe at this time that we are able to cover the population that's out there. It's our experience that the program costs much less than we anticipated, but clearly, funding is always a consideration in all of our programs.

Representative Mulligan: I've asked several times if JCAR has the authority to withhold approval based on a lack of an appropriation. My feeling with you is that I would be more open to this if you would cap the program at so many million dollars, and when you reach that level, you close eligibility until the following year, until we find some money. If it's open-ended, you've created an open-ended entitlement program. So while I feel you probably have the authority to go ahead with this, the problem I have is still the budget part of it.

Ms Hoffman: We believe we have the money. It is an identifiable population. As we go forward, we are always willing to consider things, but we believe that we have the money and we have the authority and that the rule, in its current form, is ready to be adopted.

Director Maram: HFS has been consistent on one item, in addition to others. Each year we come to you; we deal with the money we have. We have been financially responsible. We know the money is in our budget.

Ms Hoffman: That includes staying within the guidelines the General Assembly has set for us in terms of overall payment.

Representative Mulligan: I don't have any other questions. I just have a problem meeting with groups and telling them I'm going to be for healthcare, putting on my brochures that I'm for healthcare, then not being for healthcare. I'm trying to balance out what you say you have the authority to do and the available money. I would like to see a cap.

Ms Hoffman: This is not anything we haven't done before and that hasn't been before this body.

Director Maram (with Mr. Moss): Our cost for this fiscal year is estimated at \$14 million. That is not a small amount, but it is doable, and we have the money.

Ms Hoffman: The federal government's failure to act with regard to SCHIP and HFS having to switch those adults is costing us \$50-65 million. We constantly have to reevaluate.

Director Maram: There is a reason why the American Cancer Society quit putting out no smoking ads. It's because the biggest obstacle to people's health is not having healthcare coverage. Not providing this coverage increases all our costs for the uninsured.

Representative Lang: Everyone here wants to provide healthcare. The question is, should this be done by rule. You've all indicated that you have the money. You've said this several times. Where do you have the money?

Ms Hoffman: In our appropriated budget.

Representative Lang: So you have an appropriated budget for a lump sum of somewhere around \$6 billion dollars, right?

Ms Hoffman: For our medical programs, right.

Representative Lang: You had contemplated that \$6 billion dollars being needed for \$6 billion worth of programs. If you now pay for an expanded program out of money that had been appropriated for other purposes and did not contemplate the expansion, isn't something else going to be shortchanged?

Ms Hoffman: No, that's not how we budget. We do projections, and we have demonstrated consistently that we stay within those projections. This was part of our budget.

Representative Lang: So was there a surplus within the \$6 billion that was appropriated?

Ms Hoffman: Not at all. You will see that in our numbers. That is never the case.

Representative Lang: So if there was not a surplus, and you added a program that was not contemplated within the \$6 billion, where is the money coming from?

Ms Hoffman: The money is in the budget.

Representative Lang: You have stated that 3300 people have been added to the program. Within what time range?

Ms Ellinger: We started covering people starting December 1.

Representative Lang: On what date did JCAR fail to approve the emergency rule?

Ms Hoffman: I don't recall. Sometime before that.

Representative Lang: Under what guidelines, rules or chutzpah does the Department decide that, when it comes to JCAR for approval and we don't give it, you're going to sign up 3300 people?

Ms Hoffman: We believe that we have the authority to do so.

Representative Lang: So why did you come to JCAR in the first place?

Ms Hoffman: We are going through the process.

Representative Lang: You are going through a process you don't believe in. Again, why are we here?

Ms Hoffman: To have an open forum, to hear comments, to participate, to try to make sure that we're implementing, to listen to concerns.

Representative Lang: If JCAR had said yes, that would have been a really good thing, but since JCAR said no, it doesn't really matter what we say.

Ms Hoffman: I'm not saying that. You are talking about the emergency rule, and we're here today to talk about the proposed rule.

Representative Lang: In the meantime, when you were rejected on the emergency rule, you went ahead and added 3300 people to the program. We suggested that you separate the persons being picked up from the expired SCHIP waiver from those covered by the expansion, suggesting that we could accept your emergency argument with respect to the waiver pickup. Your answer was, absolutely not. That JCAR vote was 9 to 2. Can you say why you have blithely ignored us?

Ms Hoffman: We don't think we have. We don't think it is appropriate to separate those populations. We believe that the rule as it stands is ready for adoption.

Representative Lang: You didn't answer my question.

Ms Hoffman: I did so to the best of my ability.

Representative Lang: I want an answer from somebody as to why the 3300 people were added, considering JCAR's action.

Ms Hoffman: We believe that we have the authority to do so.

Representative Lang: Then why did you come here at all?

Ms Hoffman: We are prepared to be here in front of this group.

Representative Lang: You'll accept a good answer, but not a bad one. Is that correct?

Ms Hoffman: We are prepared to respond to your questions.

Representative Fritchey: Many of us on this Committee support the same goal as you; we don't support the means by which you have attempted to achieve it. Have you considered trying to expand FamilyCare through legislation? Many of us have been suggesting that you do so.

Ms Hoffman: We believe the legislature gave us the authority to expand this program in the Public Aid Code. We have not acted in any way in which we've not acted in the past.

Representative Fritchey: I get that. JCAR has made clear its belief that you don't have the basis on which to do it. My question is, has the Administration considered doing this by legislation?

Director Maram: It is clear that we have the authority to do this.

Representative Fritchey: You didn't seek legislation because you thought you could do it through rulemaking. When this body expressed that it believes otherwise, you proceeded

anyway. That action has resulted in a pending lawsuit. What happens if the judge were to rule with the plaintiffs, finding that the 3300 people you have signed up were signed up in violation of applicable law? What happens to the 3300? My understanding is that they would not have State supported healthcare. What happens to the providers who have provided services to those individuals if the State has to say that we can't reimburse you because we have no legal basis to do so? If I were counsel to those providers, I would say that they now have to go back to those patients to collect the payments.

Ms Hoffman: We don't want to speculate. We are hopefully optimistic those people will remain covered, and you have to remember that they weren't covered before.

Representative Fritchey: You've hit it on the head. They weren't covered before, but now they have received medical treatment believing they are covered. You've got to admit that there is, at a minimum, a question of whether the JCAR Suspension prohibited your action. Should the court decide with the plaintiffs, you've got over 3000 people in limbo; you've got a lot of providers who are going to be suing their patients. The fact that 3300 have signed up indicates there's a need. However, they have now incurred medical costs for which they may be found liable, potentially creating a financial disaster for those persons.

Director Maram: The number one financial disaster is working families not having healthcare coverage. He repeated his earlier points about working families.

Ms Hoffman: There's not really an answer because we don't know the outcome. We don't want to speculate.

Representative Fritchey: But you are willing to speculate that JCAR didn't have the right to issue its Suspension.

Ms Hoffman: I can't respond to that.

Director Maram: Right now we're trying to get your support for working families. We're also concerned for the 20,000.

Representative Fritchey: As Representative Lang has stated, the door was thrown wide open for you to take care of the 20,000. Part of my concern is the difference between access to health coverage and access to healthcare. The only thing worse than giving someone no hope is giving them false hope. If we give them access to health coverage, but they can't find a provider to take them, what have we done for them? People say to me, we've got KidCare, but we can't find a pediatrician to take our child. What are your thoughts about provider participation and provider payment?

Director Maram: These programs have met great success. There will always be people who say they are looking for a doctor, and we almost always try to help that person find a doctor when we hear about it. But we hear every day about the successes. We have more practitioners now in our programs. We have done things in partnership with the General Assembly. We went into a

primary care case management mode, which means everyone has a medical home. Doctors are being paid within 30 or 60 day payment cycles.

Ms Eagleson: We have about 1600 more physicians enrolled now than when we started the program. We've assigned over 1.7 million medical beneficiaries to medical homes, and we have a contractor in place who helps find both primary care and specialty physicians.

Representative Fritchey: I would suggest that getting that information to members of the General Assembly may do wonders for your case. I've just heard more in the past 30 seconds than I've heard in the last 3 months on that issue. Director, you have shared some information with me about some cost savings that might make payment for this program possible. As I told you, one of the frustrations many of us have had is that all we were being told was, don't worry, we can pay for it. How? Don't worry, we can pay for it. Help yourselves here.

Ms Hoffman: We are prepared to do that. We are working very hard to gather materials to share with the General Assembly that demonstrate that. We give information as requested. But again, sometimes, although you are advocates for healthcare and are trying to understand it, it shouldn't be like mother-may-I. We'd love to educate you on our programs because we are very proud of them and think we have managed very well. I want to thank you and the other members of this Committee who have taken the time to spend time with us. We look forward to your support. I want to thank the Executive Director as well for sitting down with us on technical issues.

Representative Miller: There has been some discussion about backlog in the State's payments to medical assistance vendors. As a practitioner, I can tell everyone I just got paid on services I performed in August. Can you address this?

Director Maram: We are right on target with the dollars you appropriated to us, and are probably a little below. When the budget was approved, it was clear what the payment cycle was, and we are now within that cycle. A number of physicians are getting paid for child care within 30 days and for adult care within 60 if it's a clean bill.

Mr. Moss: We projected with this budget an average 70 day payment cycle, overall average for the year. We are currently at about 68 days.

Director Maram: That includes those who do heavy Medicaid, who are expedited, so some will be below 70 and others will be above. If there are people who are out there in large numbers, we're glad to talk to them. We respond very quickly to work with providers.

Representative Miller: We've been asking for this information for a period of time.

Director Maram: We gave responses to you. Year after year, HFS is on target with its budget.

Ms Hoffman: We share this information all the time. That's information that's out there.

Representative Miller: I would debate that. We've been in the dark. You're saying the numbers we have now received are accurate, and we'll proceed from there. I have reservations about how this entire issue has been handled.

Ms Hoffman: We are not doing this in any way we haven't acted before, and in front of this tribunal.

Senator Burzynski: Can you substantiate with numbers the fact that you have more and more providers coming on line? It's my understanding that we've lost about 11,000 Medicaid providers in Illinois based on numbers of vendors who have been paid over the past couple of years. In my district, there are fewer providers, and public health clinics are having trouble meeting demands.

Ms Eagleson: We have about 1600 more active physicians than we had in FY 03. An active Medicaid provider is one who has billed us within the past 12 months. I'm happy to share those numbers with you, and we could look at the numbers with respect to your particular district.

Senator Burzynski: I'd like to see those numbers for 03 through 08.

Representative Lang: It is fair to say that everyone on JCAR, and in fact everyone in the General Assembly, supports better healthcare. But it's also fair to say that the members of this panel feel a strong statutory and constitutional responsibility to do the work of JCAR in the way it's supposed to be done. For my money, I wish the Administration understood its constitutional responsibilities. Because I don't feel it does, I move that JCAR object to and prohibit filing of the rulemaking to the extent that it expands medical assistance to persons other than those formerly receiving medical coverage under a federal SCHIP waiver for caretaker relatives of children covered by SCHIP. The budgetary impact on the State is likely to be significant. An expansion of this magnitude should not be initiated without a specific legislative determination that adequate financial resources are, and will continue to be, available. The General Assembly did not include expanded FamilyCare during its formation of the FY08 budget. Further, the General Assembly did not pass any statutory authority for such expansion. To enter into this expansion without the assurance of available funding or specific statutory authority is not in the public interest. The motion was seconded by Representative Leitch.

Ms Hoffman: You are specifically separating over 185%, and I want to know the authority of this body to do that.

Representative Mulligan: I want to explain my vote. I believe JCAR has the right to suspend or object to a rule. My disagreement with some of my colleagues is that there is a basis for this expansion that was granted in previous budget years, and for that reason, I vote no. It has nothing to do with the actual expansion or the money.

The motion passed on a rollcall vote of 8-2-0 (No: Hassert and Mulligan).

Senator Rutherford asked to address another HFS rulemaking.

***Department of Healthcare and Family Services – Reimbursement for Nursing Costs for***

***Geriatric Facilities (89 Ill. Adm. Code 147; 32 Ill. Reg. 415) (Emergency)***

Tamara Hoffman and Theresa Eagleson represented the Department.

Senator Rutherford explained that, at its last meeting, JCAR suspended this emergency rule dealing with the Minimum Data Set (MDS) because no emergency situation was proven by the agency. After that action, the Department offered additional information suggesting that JCAR should reconsider its Suspension with respect to certain aspects of the rulemaking that implemented rate changes passed by the General Assembly that were effective January 1, 2008. The Suspension would continue to apply to the remainder of the rulemaking, and those non-emergency provisions would continue to be considered during the regular proposed rulemaking process.

Representative Rutherford moved, second by Representative Lang, that the JCAR Suspension of the emergency rule be withdrawn with respect to those portions of the rule affecting rate changes only. JCAR believes those portions of the rule to be the legitimate subject of emergency rulemaking, as those rate changes implement an additional appropriation making those rates effective January 1, 2008. The portions of the rule affecting HFS monitoring of providers under this program are not of an emergency nature and the Suspension stays in place for those provisions, allowing for the full public review and opportunity to comment afforded by the proposed rulemaking process. The specific portions of the emergency rule for which the Suspension is withdrawn are as follows:

- Section 147. Table A
  - Nutrition Level II
  - Ventilator Care Categories
  - Restorative Programs
  - Moderate/Intensive Skin Care
  - Nutrition Level I
  - Hydration
  - Morbid Obesity
  - Psychosocial Adaptation
  - Psychotropic Medication Monitoring
  - Close or Constant Observation – Section S
- Section 147.150(c)(1)(E)(iii)
- Section 147.175(d)(1)(C)

Ms Hoffman: We still believe the entire rule represents a legitimate emergency, and we believe the Department has the right to determine that, but in the interest of moving forward, we want to do whatever we can do. If you can look in relative terms of emergency, we want to make sure that these people get paid, and we agree to separate out the rule text you mention.

Representative Rutherford again pointed out that the remainder of the rule should be subject to the full public disclosure and discussion allowed by the proposed rulemaking process.



Ms Eagleson asked for clarification that the rule text referenced in the motion was the same as that provided by the Department in yesterday's memo.

Representative Rutherford confirmed that it was.

The motion passed on a rollcall vote of 10-0-0.

### **MARCH MEETING DATE**

Senator Crotty announced that the next JCAR meeting will be Tuesday, March 11, 2008, 11:00 (should have been 9:00) a.m., Room C-1, Stratton Office Building in Springfield.

### **ADJOURNMENT**

On a motion by Representative Miller, seconded by Senator Burzynski, the meeting was adjourned.

*Min:0802Feb*